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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2816

12 MELISSA ANN OCHOA
13 3551 Belle Terrace
14 Bakersfield, CA 93309

**DEFAULT DECISION
AND ORDER**

14 Pharmacy Technician License
15 No. TCH 37662

[Gov. Code, §11520]

16 Respondent.

17 FINDINGS OF FACT

18 1. On or about August 22, 2005, Complainant Patricia F. Harris, in
19 her official capacity as the Executive Officer of the Board of Pharmacy ("Board"), filed
20 Accusation No. 2816 against Melissa Ann Ochoa (Respondent) before the Board of
21 Pharmacy.

22 2. On or about June 21, 2001, the Board issued Pharmacy Technician
23 License No. TCH 37662 to Respondent. The Pharmacy Technician License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on
25 March 31, 2006, unless renewed.

26 3. On or about September 22, 2005, Anna A. Carpenter, an employee
27 of the Department of Justice, served by Certified and First Class Mail a copy of the
28 Accusation No. 2816, Statement to Respondent, Notice of Defense, Request for

1 Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to
2 Respondent's address of record with the Board, which was and is 3551 Belle Terrace,
3 Bakersfield, California, 93309. A copy of the Accusation is attached as exhibit A, and is
4 incorporated herein by reference.

5 4. Service of the Accusation was effective as a matter of law under
6 the provisions of Government Code section 11505, subdivision (c).

7 5. On or about September 30, 2005, the aforementioned documents
8 were received at the address of record. A copy of the Domestic Return Receipt is
9 incorporated herein by reference.

10 6. Government Code section 11506 states, in pertinent part:

11 "(c) The respondent shall be entitled to a hearing on the merits if the
12 respondent files a notice of defense, and the notice shall be deemed a specific denial of all
13 parts of the accusation not expressly admitted. Failure to file a notice of defense shall
14 constitute a waiver of respondent's right to a hearing, but the agency in its discretion may
15 nevertheless grant a hearing."

16 7. Respondent failed to file a Notice of Defense within 15 days after
17 service upon her of the Accusation, and therefore waived her right to a hearing on the
18 merits of Accusation No. 2816.

19 8. California Government Code section 11520 states, in pertinent
20 part:

21 "(a) If the respondent either fails to file a notice of defense or to appear at
22 the hearing, the agency may take action based upon the respondent's express
23 admissions or upon other evidence and affidavits may be used as evidence without
24 any notice to respondent."

25 9. Pursuant to its authority under Government Code section 11520,
26 the Board finds Respondent is in default. The Board will take action without further
27 hearing and, based on Respondent's express admissions by way of default and the

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1 evidence before it, contained in exhibits A and B finds that the allegations in Accusation
2 No. 2816 are true.

3 10. The total costs for investigation and enforcement are \$5,357.75 as
4 of January 3, 2006.

5 DETERMINATION OF ISSUES

6 1. Based on the foregoing findings of fact, Respondent Melissa Ann
7 Ochoa has subjected her Pharmacy Technician License No. TCH 37662 to discipline.

8 2. A copy of the Accusation is attached.

9 3. The agency has jurisdiction to adjudicate this case by default.

10 4. The Board is authorized to revoke Respondent's Pharmacy
11 Technician License based upon the following violations alleged in the Accusation:

12 a. Business and Professions Code section 4060, possession of
13 a controlled substance for sale, methamphetamine.

14 b. Business and Professions Code sections 4301(l) and 490,
15 conviction of a crime substantially related to the qualifications, functions, or duties of a
16 pharmacy technician.

17 ORDER

18 IT IS SO ORDERED that Pharmacy Technician License No. TCH 37662,
19 heretofore issued to Respondent Melissa Ann Ochoa, is revoked.

20 Pursuant to Government Code section 11520, subdivision (c), Respondent
21 may serve a written motion requesting that the Decision be vacated and stating the
22 grounds relied on within seven (7) days after service of the Decision on Respondent. The
23 agency in its discretion may vacate the Decision and grant a hearing on a showing of good
24 cause, as defined in the statute.

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1 This Decision shall become effective on May 31, 2006.

2 It is so ORDERED May 1, 2006

3 BOARD OF PHARMACY
4 DEPARTMENT OF CONSUMER AFFAIRS
5 STATE OF CALIFORNIA

6
7 By



8 STANLEY W. GOLDENBERG
9 Board President

60120415.wpd

DOJ docket number:LA2004601986

Attachment:

Exhibit A: Accusation No.2816

Exhibit A

Accusation No. 2816

BILL LOCKYER, Attorney General
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California Department of Justice
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Attorneys for Complainant

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2816

MELISSA ANN OCHOA
3551 Belle Terrace
Bakersfield, CA 93309

A C C U S A T I O N

Pharmacy Technician Registration
No. TCH 37662

Respondent.

Complainant alleges:

PARTIES

1. Patricia F. Harris (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about June 21, 2001, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 37662 to Melissa Ann Ochoa (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2006, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 4300 of the Business and Professions Code provides, in pertinent
2 part, that every license issued by the Board is subject to discipline, including suspension or
3 revocation.

4 5. Section 4301 states:

5 "The board shall take action against any holder of a license who is guilty of
6 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
7 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
8 following:

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10 "(f) The commission of any act involving moral turpitude, dishonesty, fraud,
11 deceit, or corruption, whether the act is committed in the course of relations as a licensee or
12 otherwise, and whether the act is a felony or misdemeanor or not.

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14 "(j) The violation of any of the statutes of this state or of the United States
15 regulating controlled substances and dangerous drugs.

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17 "(l) The conviction of a crime substantially related to the qualifications, functions,
18 and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
19 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
20 substances or of a violation of the statutes of this state regulating controlled substances or
21 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
22 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
23 The board may inquire into the circumstances surrounding the commission of the crime, in order
24 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
25 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
26 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty
27 or a conviction following a plea of nolo contendere is deemed to be a conviction within the
28 meaning of this provision. The board may take action when the time for appeal has elapsed, or

1 the judgment of conviction has been affirmed on appeal or when an order granting probation is
2 made suspending the imposition of sentence, irrespective of a subsequent order under section
3 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a
4 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,
5 or indictment.

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7 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or
8 abetting the violation of or conspiring to violate any provision or term of this chapter or of the
9 applicable federal and state laws and regulations governing pharmacy, including regulations
10 established by the board."

11 6. Section 4060 states:

12 "No person shall possess any controlled substance, except that furnished to a
13 person upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian, or
14 furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
15 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
16 Section 3502.1. This section shall not apply to the possession of any controlled substance by a
17 manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, optometrist, veterinarian,
18 certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers
19 correctly labeled with the name and address of the supplier or producer.

20 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner,
21 or a physician assistant to order his or her own stock of dangerous drugs and devices."

22 7. Section 490 states:

23 "A Board may suspend or revoke a license on the ground that the licensee has
24 been convicted of a crime, if the crime is substantially related to the qualifications, functions, or
25 duties of the business or profession for which the license was issued, or the ground of knowingly
26 making a false statement of fact required to be revealed in an application for such license. A
27 conviction within the meaning of this section means a plea or verdict of guilty or a conviction
28 following a plea of nolo contendere. Any action which a Board is permitted to take following the

1 establishment of a conviction may be taken when the time for appeal has elapsed, or the
2 judgment of conviction has been affirmed on appeal, or when an order granting probation is
3 made suspending the imposition of sentence, irrespective of a subsequent order under the
4 provisions of Section 1203.4 of the Penal Code.”

5 8. California Code of Regulations, title 16, section 1770, states:

6 "For the purpose of denial, suspension, or revocation of a personal or facility
7 license pursuant to Division 1.5 (commencing with section 475) of the Business and Professions
8 Code, a crime or act shall be considered substantially related to the qualifications, functions or
9 duties of a licensee or registrant if to a substantial degree it evidences present or potential
10 unfitness of a licensee or registrant to perform the functions authorized by his license or
11 registration in a manner consistent with the public health, safety, or welfare."

12 9. Section 118, subdivision (b), of the Code provides that the
13 suspension/expiration of a license shall not deprive the Board of jurisdiction to proceed with a
14 disciplinary action during the period within which the license may be renewed, restored, reissued
15 or reinstated.

16 10. Section 125.3, subdivision (a), states, in pertinent part:

17 "Except as otherwise provided by law, in any order issued in resolution of a
18 disciplinary proceeding before any board within the department . . . the board may request the
19 administrative law judge to direct a licensee found to have committed a violation or violations
20 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case."

22 11. CONTROLLED SUBSTANCES

23 "Amphetamines," is brand name for Methamphetamine. It is a Schedule II
24 controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2)
25 and is categorized as a "dangerous drug" pursuant to Business and Professions Code section
26 4022.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Conviction of a Substantially Related Crime)

3 12. Respondent is subject to disciplinary action under sections 4301,
4 subdivisions (f), (l), and 490 of the Code, in conjunction with California Code of Regulations,
5 title 16, section 1770 for unprofessional conduct, in that Respondent was convicted of a crime
6 substantially related to the qualifications, functions, or duties of a pharmacy technician, by reason
7 of the following:

8 A. On or about January 6, 2004, Respondent was convicted by the court on a
9 plea of nolo contendere of one count of violating Health and Safety Code section 11378
10 (possession of a controlled substance for sale: methamphetamine), a felony, in the Superior
11 Court, Metropolitan Division of the State of California, County of Kern, entitled *People v.*
12 *Melissa Ann Ochoa*, Case No. BF104501A.

13 B. The circumstances surrounding the conviction are that on or about
14 November 10, 2003, Respondent willfully and unlawfully possessed for the purpose of sale, a
15 controlled substance, to wit: Methamphetamine.

16 SECOND CAUSE FOR DISCIPLINE

17 (Violation of Law)

18 13. Respondent is subject to disciplinary action under sections 4300 and
19 4301, subdivisions (j) and (o), on the grounds of unprofessional conduct, for violating section
20 4060, in that on or about January 6, 2004 Respondent was convicted of a crime for possession of
21 a controlled substance, as more fully set forth in paragraph 12 above.

22 PRAYER

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein
24 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

25 1. Revoking or suspending Pharmacy Technician Registration No. TCH
26 37662, issued to Melissa Ann Ochoa;

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1 2. Ordering Melissa Ann Ochoa to pay the Board of Pharmacy the reasonable
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions
3 Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.

5 DATED: 8/22/05

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P. J. Harris

PATRICIA F. HARRIS

Executive Officer

Board of Pharmacy

Department of Consumer Affairs

State of California

Complainant